

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CRAIG ELMER CHAPMAN,)	CIVIL NO. 07-00002 JMS-LEK
)	
Plaintiff,)	
)	
vs.)	
)	
JOURNAL CONCEPTS, INC., ET)	
AL.,)	
)	
Defendant.)	

**ORDER DENYING PLAINTIFF'S SECOND AMENDED MOTION FOR LEAVE
TO FILE SECOND AMENDED COMPLAINT IN ORDER TO ADD PARTIES
AND ADD CAUSES OF ACTION PURSUANT TO RULES 15 AND 19 F.R.C.P.**

Before the Court is Plaintiff Craig Elmer ("Owl") Chapman's ("Plaintiff") Second Amended Motion for Leave to file Second Amended Complaint in Order to Add Parties and Add Causes of Action Pursuant to Rules 15 and 19 F.R.C.P. ("Motion"), filed on August 19, 2008. The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawaii. The Court therefore VACATES the hearing on the Motion, currently set for September 24, 2008 at 9:30 a.m. After careful consideration of the Motion and the relevant legal authority, Plaintiff's Motion is HEREBY DENIED for the reasons set forth below.

DISCUSSION

Plaintiff filed the instant action on January 3, 2007.

This Court's April 9, 2007 Rule 16 Scheduling Order set a July 20, 2007 deadline to add parties and amend pleadings. Plaintiff filed a Motion to Amend Complaint in Order to Add Parties on July 27, 2007. This Court granted the motion, which was unopposed, on August 14, 2007. Plaintiff filed his First Amended Complaint on August 15, 2007.

Plaintiff now seeks to file a Second Amended Complaint to add parties and claims pursuant to Federal Rules of Civil Procedure 15 and 19. The deadline to add parties and amend pleadings, however, has long passed and Plaintiff must first establish good cause to amend this Court's scheduling order. See Fed. R. Civ. P. 16(b)(4) (stating that a scheduling order "may be modified only for good cause and with the judge's consent"). The good cause inquiry focuses on the diligence of the party seeking to modify the scheduling order; if the party seeking the modification was not diligent, the court should deny the motion. See Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002). "The pretrial schedule may be modified 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" Id. (quoting Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)).

Plaintiff argues that he timely served the defendants with requests for admissions and answers to interrogatories over a year ago, but they did not respond until a few weeks ago.

Plaintiff states that he was unaware of the grounds for the new claims and new parties until he received this discovery. Thus, Plaintiff urges the Court to grant the Motion because he diligently sought discovery before the deadline to add parties and amend pleadings and because the defendants' delayed responses were beyond his control.

First, this Court notes that Plaintiff must bear some responsibility for the delay in obtaining the defendants' responses because of the manner in which Plaintiff chose to conduct his discovery. Second, even assuming, *arguendo*, that the defendants were dilatory in responding to Plaintiff's discovery requests, Plaintiff could have secured more timely responses by filing a motion to compel. Plaintiff, however, did not do so. This Court therefore finds that Plaintiff has not established good cause to amend this Court's scheduling order with regard to the deadline to add parties and amend pleadings.

CONCLUSION

On the basis of the foregoing, Plaintiff's Second Amended Motion for Leave to file Second Amended Complaint in Order to Add Parties and Add Causes of Action Pursuant to Rules 15 and 19 F.R.C.P., filed August 19, 2008, is HEREBY DENIED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, September 2, 2008.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

CRAIG ELMER CHAPMAN V. JOURNAL CONCEPTS, INC., ET AL; CIVIL NO.
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F.R.C.P.